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GEORGE M. COCHRAN, AS A LAWYER.

The bar of Virginia unites in mourning the loss to the profession in the death, April 6, 1900, of the great "Valley lawyer," George M. Cochran.

George M. Cochran was a native of Augusta county, Virginia, where he lived and labored to the end. He belonged to that hardy and liberty-loving race who strikingly believe in plain living and high thinking—the Scotch-Irish. He inherited the sturdy qualities of his race, and was indeed a typical Scotch-Irishman.

Nature was liberal to him, both mentally and physically. He was a striking example of *mens sana in corpore sano*. He was of commanding stature, standing some six feet tall, full chested, with broad shoulders, and tapered to his feet. He carried his head erect, and the head he bore was a model for the artist. In him power and force were written in every lineament, and expressed in every movement. No one could behold him without recognizing the man of genius. His voice was powerful and sympathetic, ranging through all the keys in the scale. His eye was bold, defiant and magnetic, and his heart throbbed with emotion, but was subject to his will. He had a quick and retentive memory, a heart-searching intuition, and a perception like the flashing of the light. He was possessed of a strong masculine understanding, brilliant imagination, profound judgment and a masterful will. In him all the modifications of moral life could find a tone—an accent. He had all his life been a wide reader and a deep thinker. His mind was stored with the winnowed wisdom of the ages, and he brought all his gifts and acquirements to bear on the practice of his profession, of which he was a master.

Mr. Cochran, after completing a thorough academic education at the University of Virginia, studied law at the same school under that distinguished law instructor, John B. Minor, graduating in 1856. In the same year he began the practice of his profession in Staunton, Augusta county, Virginia, and, except during his four years of service in

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the war between the States, he continued in active practice until the day of his death. He died in harness. Death came to him without a warning, when he was in apparently good health, and in the prime of his intellectual faculties. Although the vigor of his intellect had not one whit abated, yet for the last few years, and since his promising young son, John Baldwin, came to the bar, he did little office work, and no jury practice, but devoted his time to work in appellate courts and to advising members of his profession. His advice was constantly sought after by members of the bar throughout this State and West Virginia. He had made a very comfortable fortune in the practice of his profession, and always gave his advice to his brethren free of charge. There was hardly an important case at his home bar that he was not called on for friendly advice, by counsel.

Until five or six years ago, Mr. Cochran appeared in almost every important jury case, whether civil or criminal, that was tried in the courts of Staunton and Augusta county. As a trial lawyer, after the death of John B. Baldwin, he reigned supreme in the Valley of Virginia; and, during the life of Baldwin, it was, as the Scotch-Irish of the Valley expressed it, "*nip and tuck* between Cochran and Baldwin."

It is not common for young lawyers to take a high place in their profession at the start. The law is a trying profession, and if, within ten years, a lawyer has taken a fair stand at a strong bar he has done well. Not so, however, with Mr. Cochran. He went right to the front in a bound, and at a time when giants were at the bar, such as Harman, Fultz, Sheffy, Michie, Stuart, and Baldwin.

In his office work Mr. Cochran was a painstaking, methodical, business man. His clients' business never suffered in his hands. As soon as collections were made, they were paid over, and at the close of his lucrative practice there are no disagreeable odds and ends about his estate to embarrass his executor.

During his long professional life he made it an invariable rule to attend to business promptly and to use dispatch with everything in hand. He was a rapid worker, and could do more work in a given time than any lawyer we ever knew. He had the genius of doing work in the simplest way. He had a marvelous gift of condensing thought and in expressing himself in the fewest and simplest words. He would say in a few lines what it would take pages for others to say. His pleadings were models of brevity; his arguments were condensed thunderbolts.

He never advised a client to bring a suit that he did not think was

founded on right and justice; and, in the memory of the bar, he was never known to lose a suit that had been brought by his advice.

When he was retained in a case he gave it the most painstaking attention. He first required his client to state his case in his own way, and then proceeded to subject him to a close and severe examination, in order to better arrive at a clear understanding of the whole matter. Nor did he take for granted all that his client said about his case. He was never credulous. We once heard him say that a lawyer could not be too careful in searching his client to find out the truth of his case, and ought always to examine with special care the case of the client who comes ready to promise everything, offering to produce a cloud of witnesses and documents, and averring that his adversary would not even offer any evidence on certain material points.

Not relying alone on his client, he always promptly resorted to every other accessible source of information about the case in hand. He was a careful searcher after the facts on both sides of a case, and when he came to trial he knew his adversary's strong and weak points almost as well as his own. He did not gain his information by proxy alone, but interviewed his witnesses in person. He always said that the lawyer is a simpleton who calls witnesses to testify without first personally interviewing them. If possible, he interviewed the most influential and intelligent witness in the presence of the other witnesses. Where a witness appeared to be weak, tricky, or vacillating, he took a note of his evidence, and required the witness to sign it, or else he examined the witness in the presence of some certain and reliable person. All that could be learned about the case before trial he knew, and always had his course mapped out for the introduction of testimony. On the day set for trial, if he found that anything had been left undone that ought to have been done he would gain a continuance, if it could be done honorably. But few lawyers, if any, however, were more prompt than he in having their cases ready for trial.

The applicable law was carefully attended to, in the case in hand. We never knew him to be taken by surprise on a question of law at the trial. He instinctively avoided bad law, and endeavored to plant his case on sound legal principles. He never tried to make every possible point, but the strong points he was always ready and prepared to bring out in bold relief. When he went into a trial, he had at his command the law controlling the facts, and he had that wonderful faculty of discerning at once the whole truth of his case.

Before going into the trial, he took care to find out all that he could

about the jury—their religion and politics, their social standing and environments, their prejudices, etc., and he specially endeavored to ascertain whether any of them were prejudiced against him or his client, or against the character of the case to be tried. When he came to present his case to the jury, he knew each man of them, almost as if they had been his old friends.

It must not be supposed, however, that he himself ever mixed among the jurors and was with them "a hail fellow." He was never familiar with any one. He never gave a juryman to understand, by his action or manner, that he had any favors to ask, or that he expected any. He had nothing of the demagogue about him, and was never "one of the boys." He was as reserved amongst the masses as a British peer. He was too much of a Scotch-Irishman to unbend socially, for any advantage it might bring; yet he knew all classes of men, as well as if he had all his life been amongst the boys, and he had a hold upon the confidence of the masses in the Valley of Virginia that no other man ever had.

In his opening statement, he always presented his case in the simplest way that the law and the facts would admit. He gave the substance of what he intended to prove, "concisely and in an abridgment." It often happened that he opened in ten minutes a case that would have occupied other lawyers half an hour or more. But when his evidence was disjointed, he always presented it, in his opening statement, piece by piece to the jury, with such perfect system and order, that they could readily see the relation of each piece to the other, and the bearing of each item upon the whole case. His statements were never overdrawn, were truthful and natural, and always followed in order, time and place, so that the simplest mind on the jury could get a right understanding of the case. He had the happy faculty of never stating too much nor too little. We never knew him to give his adversary any advantage from his opening statement. He was always intensely in earnest in his opening, and used such wonderful force, combined with moderation, that we have often known him, in effect, to state his adversary out of court.

He called his witnesses to prove his case, according to the careful, systematic order that he had arranged beforehand, so that the jury could gain a clear and connected understanding of the case from the witnesses. To avoid breaks or confusion in the evidence, he always, if possible, avoided calling a witness out of the logical order. He used to say that he had frequently seen good cases lost by calling material

witnesses out of their order, for the reason that the lay mind is easily confused and material points are often lost sight of by the jury, when the evidence is introduced in a disconnected way.

The rules of evidence seemed to be part and parcel of his being, and fairly oozed out of the pores of his skin. He was a prodigy in divining the character and peculiarities of witnesses and of the jury, and an adept in the application of his knowledge in the examination of witnesses.

He never led his own witness in material matters; to do so, he asserted, was a disadvantage. He said that he had often known material evidence to be emasculated by leading questions, and that the jury always distrusts that which comes from the mouth of counsel, rather than from the witness. We have known members of the bar to be surprised at the way he would often allow his adversary to ask leading questions in chief. But when he came to the argument of the case, it was always apparent why he had permitted it, for he invariably gave the jury to understand that the testimony thus adduced was from the mouth of counsel rather than from the mouth of the witness. He never failed to convert into absolute distrust the suspicions of the jury about evidence elicited by leading questions.

He never asked his own witnesses such questions as: "Are you sure of that?" or, "Are you quite sure?" or "Have you any doubt of it?" He used to say that that species of cross-examination of your own witness is a common fault in weak or inexperienced lawyers, and that there is hardly a surer way of impressing the jury that you do not quite believe your own witness, and besides running the risk of causing your witness to say that he is not quite sure, or that he has some doubt, and thus producing disastrous results.

If in the testimony of his own witness there were any specially weak points that he believed his adversary would bring out with force, he would anticipate it, and himself bring it out, but so adroitly that he would absolutely thwart the advantage that his adversary might have otherwise gained.

He always tried to get a witness to give his testimony in his own natural way, and to tell his story just as he would tell it to his friends out of court. He watched his witness carefully while giving evidence, and only interrupted him to avoid irrelevant or hearsay matter. He encouraged a witness in telling his story by the commonplace questions, such as: "What took place next?" etc. His aim was always to bring out the events in the order in which they occurred, with all

associated conversations and minor incidents and details; and he endeavored, by proper and apt questions, to draw out of the witness every material thing that they knew about the principal events, and the details and incidents connected with each event, so that the witness, as he proceeded, and at the conclusion of his examination, had completed and perfected his statement in every detail, and had brought out and emphasized every strong point in his testimony. In this way nothing that ought to have been told was omitted. The principal events and points in the testimony of each witness were specially brought out and impressed on the jury, and, as he used to express it, he always tried to clinch every point in the testimony as he proceeded with the examination of a witness. Besides his great skill in examination, his inspiring presence, magnetic voice and manner inimitable, seemed to redouble the confidence of his witnesses and to quicken their wits.

He used to say that the inexperienced believe that cases are very often won by cross-examination, or by a great speech, but that he had long ago found out that cases are only rarely won by either speaking or cross-examination.

Once, when asked his advice about cross-examination, he said that he had found out by much experience that the most important duty of an advocate is the examination of witnesses, but that usually more harm than good is done in cross-examination, and that he had often heard greatly-admired cross-examinations that were ruinous to the case in issue. Like Scarlett, the great English lawyer, he generally asked but few questions on cross-examination, and always more with the view to enforce the facts that he meant to rely on, than to affect the credibility of the witness.

If his adversary's witness had not damaged him to any extent, he would tell the witness to stand aside; and he never cross-examined when a witness had given a plain-spoken and frank statement, and there was risk of giving aid to the other side by any question that might be asked.

He always came to the trial with full knowledge, as far as possible, of all the favorable and unfavorable proof that could be made by the adverse witnesses; and, when he cross-examined, always brought out, with force and effect, that version of the opposing witness which was consistent with his own theory of the case. On cross-examination he never failed to show where a witness had been mistaken, or to bring out every point that took away or tended to destroy the force of his

testimony; and, if the witness was unworthy of credit, he never failed to show it conclusively to the jury. As soon as he had gained an advantage on cross-examination upon any one point, he would, as a rule, leave that point at once, for fear the witness, if pressed further, might see the advantage and explain it away.

He never re-examined his witnesses, as a rule, unless it was absolutely necessary. If his adversary brought out anything favorable to him, he left it alone; but where, on cross-examination, conversations or documents had been made admissible in his client's favor, he never failed to avail himself of the opportunity to introduce such evidence and to bring it out with great effect. No one was ever quicker to see the mistakes of his adversary and to turn them to his own use, and no one was ever quicker in seeing, meeting, or counteracting an advantage gained by his adversary. When the credibility of his own witness had been assailed on cross-examination, he was always adroit in eliciting explanations of doubtful circumstances and grounds of suspicion; and he never failed to give the real character to a transaction capable of two constructions.

In the argument, he grasped the strong point of the case, and marshalled his facts and arguments on that point of assault. As in attack, so in defense, he chose some strong position and concentrated upon it all his powers of logic and argument. He never wasted his time nor divided his strength among many heads and divisions of a subject. He laid down a great leading principle, and all of his efforts were consumed in elucidating it.

He never discussed anything that did not practically help to the verdict. He did not care what became of the minor points, if he could make some strong position impregnable. This method had not only the effect to strengthen his arguments, but to better enable the jury to remember them. His style was simple, but full of energy and force. He never strained after effect, but sent his appeals straight home to the reason. He was noted for the purity of his Saxon-English and his power of sustained effort. He had the striking ability of always keeping the end in view from the beginning, and a remarkable gift to make every subordinate point fit into the whole. He was intensely in earnest, and from "start to finish" never failed to rivet the attention of the jury. He shot his arguments red-hot into the jury, and, with the power of his voice, presence and action, wrought them into their very beings. He had led a pure and stainless life, and was respected of all men. This, combined with

his splendid abilities, made him almost irresistible before a home jury.

We have known him to win many cases by his great arguments and almost without any evidence. Some years ago, he was counsel for a man who was indicted for a heinous crime. There was but one witness in the case, and that witness was for the commonwealth. It seemed to every one who heard the evidence, that it was a foregone conclusion that the accused would be convicted. But Mr. Cochran presented the evidence of this witness in such a way, with such varied genius and with such wonderful power, that he obtained from the jury an acquittal; and we afterwards heard the prosecuting witness say that Mr. Cochran, by his argument, had convinced him that he himself was mistaken in some of his statements.

Mr. Cochran was not usually severe or sarcastic with his adversary, but on one occasion he completely demolished a very conceited attorney, who, in the conclusion of his argument for the plaintiff, turned to Mr. Cochran, who represented the defendant, and in a rather offensive manner said: "It is the polished steel of my evidence, that pierces your made-up armor, and that brings death and destruction to you and your case." Mr. Cochran, in reply, opened his argument in a manner that was terrific, and said: "Sir, if you ever had any polished steel in your evidence, it has, sir, in your hands, been turned to blunted brass and falls harmless to the ground."

On one occasion, when Mr. Cochran was indisposed, in addressing a jury he had frequently been interrupted by opposing counsel. Finally when the discussion came to a certain point, counsel again interrupted and asked in an impertinent manner: "Do I understand you to pretend that there is no difference between us?" Mr. Cochran promptly replied in the language of Lord Bacon: "There, sir, is a great difference between you and me—for me it is a pain to speak; for you, sir, a pain to hold your tongue."

In one of the last important criminal cases in which Mr. Cochran appeared, the commonwealth's attorney had made a long speech, into which there had been injected much abuse and wit. Mr. Cochran, in reply, destroyed the whole force and effect of the speech by stating in his most emphatic manner that the speech of the commonwealth's attorney was nothing but a "continent of mud and rot."

He rarely played upon words in an argument, but on one occasion, when appearing for a person who had gotten into a drunken brawl at a disreputable bar room, Mr. Cochran said: "If the devil should lose

his tail, he could readily get another where bad spirits are *re*-tailed." He rarely told anecdotes to illustrate, but when he did, it was with great effect.

In addressing the court, his manner was altogether different. He was just as dead in earnest, but without the passion and fire that he always displayed before a jury. His arguments before the court were in a conversational style. We have often heard him say that nothing was more ridiculous than to hear a lawyer shouting his arguments to a court. His aim was to speak properly to every point needing notice, and to make his points clear, in a quiet, earnest way. He used to say that a lawyer ought to address his arguments only to the head of the court, and not to both head and heart, as when addressing a jury. From the beginning to the conclusion, he was ever guided by an instinctive fulfillment of the requirements of his case.

Few, if any, lawyers ever won more cases in the Supreme Court of Appeals of Virginia than he. In arguing before that court he always first made a clear and concise statement of his case, so that the court could have an understanding of the whole matter involved, and better see the application of his arguments. He observed order and arrangement, and made his points clearly and distinctly, carefully endeavoring to sustain each position taken with authorities in point. He never took up the time of the court in offering authorities that required argument to show their application to the case in issue. He cited all necessary authorities, if he could get them, and no more. He regarded it bad practice to cite a multiplicity of authorities. His arguments were always powerful and convincing, bearing down all opposition and blazing the way to his purpose in view. The most perplexing masses of law and facts became resolved and luminous under the sunlight of his intellect.

Mr. Cochran was an active and prominent member of the Virginia State Bar Association, and at the meeting of that body, held in 1893, at the White Sulphur Springs, West Virginia, he took a leading part in the debate on law reform, and in the debate was pitted against that very able and distinguished Virginian, the Hon. John Randolph Tucker. The debate was the most striking and interesting that ever entertained that association; and in that debate, Mr. Cochran carried all the points that he advocated and made a great and lasting impression on the bar of Virginia.

Major Thomas C. Elder said of him in the memorial adopted by the Staunton bar: "Mr. Cochran was a great lawyer. . . . . No

educated or intelligent man, especially if he was himself a lawyer, could become well acquainted with Captain Cochran without recognizing him as a master in the profession. Sometimes we see a man in the profession who is learned in it and not successful or apt in its practice; and again we see a man whose success in the practice appears to be far beyond what his learning would seem to justify. But our deceased friend was at once learned in the law as a science and eminently successful in its practice. . . . . .

"There was in the mental construction and make-up of our distinguished friend, as is usually, if not invariably, the case, a close connection between the directness of his perception, amounting to almost intuition, and the soundness of his judgment. They acted and reacted on each other. The points to be resolved being quickly and clearly ascertained, and the judgment being then brought to bear directly on them to the exclusion of all irrelevant issues, the conclusion arrived at was apt to be correct. The union of such perception and such judgment accounts, in large measure, for the power of condensation in speaking and writing, which was a great and distinguishing characteristic and accomplishment of our distinguished friend."

He was self-confident without conceit. He combined extreme boldness with caution. His knowledge of the law was profound, and he knew mankind even better than he did the Code and the Reports. He understood the infinite play of feelings which, more than their reasons, moved the people with whom he dealt—parties, witnesses, jurors and even judges. He was able to tell, almost without premeditation, when the courts would administer the letter, and when the spirit, of a particular statute. He recognized truth intuitively, wherever it existed, and was just as apt in detecting falsehood. He was an adept in making both jurors and courts see with his own eyes. Many able lawyers wield civil inquiries and cases with peculiar ability; and others criminal; but how clearly and profoundly he elucidated questions of property, is well known; and with what address, feeling, pathos and prudence he defended; with what dignity and crushing power, *accusatorio spiritu*, he prosecuted the accused whom he believed to be guilty, few have seen or heard; but none who have seen or heard can ever forget. He was, indeed, a great lawyer and a great and a good man. The grand tendency of his life and character was to elevate the bar and the whole tone of the public mind. He was the pride and the glory of the Staunton bar.

CHARLES CURRY.

Staunton, Va.